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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/578,816	05/24/2000	Robert C. Yen	RCY1P001	5969
67521	7590	10/19/2012		
TI Law Group 2055 Junction Avenue, #205 San Jose, CA 95131-2116			EXAMINER SHINGLES, KRISTIE D	
			ART UNIT 2448	PAPER NUMBER
			NOTIFICATION DATE 10/19/2012	DELIVERY MODE ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT C. YEN

Appeal 2011-008576
Application 09/578,816¹
Technology Center 2400

Before CAROLYN D. THOMAS, GREGORY J. GONSALVES, and
ANDREW J. DILLON, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The real party in interest is Robert C. Yen, the inventor.

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 5, 12, 15, 17-25, and 28, which are all the claims remaining in the application. Claims 1-4 are withdrawn and claims 6-11, 13, 14, 16, 26, and 27 are cancelled. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

The present invention relates generally to data transmission over networks. *See Spec.*, 1.

Claim 15 is illustrative:

15. A data transmission system for transmitting data from content servers to requestors through a data network, said data transmission system comprising:

a plurality of data distribution centers, said data distribution centers being connected to the data network,

wherein data transmissions between the content servers and said data distribution centers use a multi-destination format so as to reduce congestion, and

wherein the multi-destination format uses multi-destination data packets, the multi-destination data packets include at least multiple destination fields and a data field.

Appellant appeals the following rejections:

1. Claims 15, and 17-24 are rejected under 35 U.S.C. § 102(e) as being anticipated by Agrusa (US 7,003,558 B2, Feb. 21, 2006); and
2. Claims 12, 25, and 28 are rejected under 35 U.S.C. § 103(a) as

being unpatentable over Agrusa in view of Singh (US 6,665,704 B1, Dec. 16, 2003).

3. Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Agrusa in view of Yamane (US 5,701,580, Dec. 23, 1997).

ANALYSIS

Claims 15 and 17-24

Issue: Did the Examiner err in finding that Agrusa discloses the transmission of “multi-destination data packets,” as claimed in claim 15?

The Examiner found that “[t]he multiple destination fields and data [field] are inherent and obvious in the message used to disseminate to the plurality of requestors.” (Ans. 10.)

Appellant contends that “neither of these referenced portions of Agrusa et al. teach or suggest data transmission using multi-destination data packets.” (App. Br. 9.) We agree with Appellant.

Claim 15 requires, *inter alia*, that the multi-destination data packets include at least multiple destination fields and a data field. The Examiner merely states that this feature is “inherent” in the messages sent to the requestors (*see* Ans. 10). However, we start by noting that claim 15 defines the multi-destination data packets being transmitted between the content servers and the data distribution centers, not data packets to the requestors (*see* claim 15). Also, regarding the Examiner's inherency conclusion, we note that “[i]nherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set

of circumstances is not sufficient.” *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (citations omitted).

In other words, when relying upon a theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the Examiner’s determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. *Ex parte Levy*, 17 USPQ2d 1461, 1463-64 (BPAI 1990). Here, we find that the Examiner has not reasonably established that a *multi-destination data packet* is being used between Agrusa’s DataWorX32 program and computer **306**, i.e., between the content servers and the data distribution centers.

Specifically, Agrusa discloses in Fig. 3 that “the DataWorX32 program aggregates the requests from the computers **302** and **304** and makes a single request of computer **306** for the desired information. . . . Computer **306** responds once with the requested information” (Agrusa, col. 9, ll. 33-38). In other words, Agrusa looks at multiple requests for the same information and constructs a single request to a single data distribution center, e.g., computer **306**, which suggests a *single* destination format. Furthermore, Agrusa discloses that “[t]he program identifies which of the computers in the network have requested the information, for example by maintaining a list of the requests as they are received, and transmits to each of the requesting computers a copy of the information that it obtained from the computer **306**” (col. 9, ll. 40-44). In other words, Agrusa maintains a “list” of requestors to send information to. However, the Examiner has not shown that this “list” necessarily leads to a multi-destination data packet format.

The difficulty that we have with the anticipation rejection before us is that there is no certainty from the Agrusa reference itself as to what specific technique is being used to carry out the aforementioned transmission of data. Agrusa merely discloses transmitting a single request and transmitting a copy of the data to all requestors. While it seems logical that one such transmission could include a multi-destination format, it is impermissible to make guesses in an anticipation rejection. Here, the Examiner has left it up to us to speculate. Just because the same data goes to multiple destinations when sent to the requestors does not necessarily mean that a *multi-destination data packet* is being used to accomplish this function. Furthermore, as mentioned above, the Examiner is not focusing on the proper transmission path when asserting that Agrusa discloses transmitting in a multi-destination format. For example, as noted *supra*, Agrusa sends the aggregated requests to a single computer, not to multiple computers. Therefore, we find that the Examiner has *not* set forth a sufficient initial showing of anticipation, and we find that Appellant has shown error in the Examiner's rejection of claim 15 and claims 17-24 which include a commensurate limitation. Therefore, we reverse the rejection of claims 15 and 17-24.

Since we agree with at least one of the arguments advanced by Appellant, we need not reach the merits of Appellant's other arguments. It follows that Appellant has shown that the Examiner erred in finding that Agrusa renders claims 15 and 17-24 unpatentable.

Claims 5, 12, 25, and 28

For claims 5, 12, 25, and 28, Appellant essentially makes the same arguments made above regarding representative claim 15. Thus, for similar reasons as noted above, we find that the Examiner has failed to establish that *Agrusa*, either alone or in combination with *Singh* and/or *Yamane*, teaches and/or suggest multi-destination data packets as claimed.

Therefore, based on the record before us, we find that the Examiner did err in rejecting claims 5, 12, 25, and 28. Accordingly, we reverse the rejections of claims 5, 12, 25, and 28.

DECISION

We reverse the Examiner's § 102 and § 103 rejections.

REVERSED

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